

## ARTICLE 20.4. STATE CERTIFICATE OF NEED

### Rule 1. Definitions

#### 410 IAC 20.4-1-1 Applicability

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana State Department of Health; 410 IAC 20.4-1-1; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

#### 410 IAC 20.4-1-2 "Applicant" defined

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 2. "Applicant" means any individual, partnership, corporation, or governmental entity which has filed an application for a CON. (*Indiana State Department of Health; 410 IAC 20.4-1-2; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

#### 410 IAC 20.4-1-3 "Application" defined

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-29-1

Sec. 3. "Application" means the formal written submission, upon forms approved by the Indiana health facilities council, for CON review and payment of fees required under IC 16-29-1. (*Indiana State Department of Health; 410 IAC 20.4-1-3; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

#### 410 IAC 20.4-1-4 "Approval" defined

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-29-1; IC 16-29-4

Sec. 4. "Approval" means an authorization by the board, when required under IC 16-29-4 or IC 16-29-1, to undertake a project subject to CON and does not include approval of architectural plans or operational programs for meeting state physical plant and licensing codes although it is required for licensure. (*Indiana State Department of Health; 410 IAC 20.4-1-4; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

#### 410 IAC 20.4-1-5 "Board" defined

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 5. "Board" means the executive board of the Indiana state department of health. (*Indiana State Department of Health; 410 IAC 20.4-1-5; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

#### 410 IAC 20.4-1-6 "Certificate of need (CON)" defined

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 6. "Certificate of need (CON)" means a finding made in accordance with this article by the board respecting an application submitted under this article, to certify beds for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.), or to construct or add comprehensive care beds, or to convert beds to comprehensive care beds. (*Indiana State Department of Health; 410 IAC 20.4-1-6; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1329*)

**410 IAC 20.4-1-7 “Certified bed” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 7. “Certified bed” means a comprehensive bed which will function as a bed licensed, or to be licensed, under IC 16-28-2 which is certified, or to be certified, for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.). (*Indiana State Department of Health; 410 IAC 20.4-1-7; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-8 “Comparative review” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 8. “Comparative review” means the simultaneous review of two (2) or more applications filed within sixty (60) days after the filing of the first such application which would result in the offering of similar services or facilities in a health service area. (*Indiana State Department of Health; 410 IAC 20.4-1-8; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-9 “Comparative review officer (CRO)” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 9. “Comparative review officer (CRO)” means an individual who is hired on a contractual basis under the authority of this article to review CON applications assigned to the CRO, implement a CON review process, and make draft findings on specific CON applications and their petition for additional comprehensive care beds. (*Indiana State Department of Health; 410 IAC 20.4-1-9; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-10 “Comprehensive bed” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 10. “Comprehensive bed” means a bed in a health care facility that is licensed, or is to be licensed, under IC 16-28-2, or functions as a bed licensed under IC 16-28-2. (*Indiana State Department of Health; 410 IAC 20.4-1-10; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-11 “Construction” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 11. “Construction” means increasing the inventory of reviewable beds in a health facility or service area through activities defined as construction work but does not include the replacement of existing beds. (*Indiana State Department of Health; 410 IAC 20.4-1-11; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-12 “Construction work” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 12. “Construction work” means initiation of and continuous substantial excavation activity or actual building, constructing, carpentering, plumbing, or wiring activities performed in the establishment, modification, or renovation of a facility but does not include planning, design, or survey activities. (*Indiana State Department of Health; 410 IAC 20.4-1-12; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330*)

**410 IAC 20.4-1-13      “Conversion” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 13. “Conversion” means changing the classification of an existing bed which is not a comprehensive bed to a comprehensive bed. *(Indiana State Department of Health; 410 IAC 20.4-1-13; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330)*

**410 IAC 20.4-1-14      “Cost incurred” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 14. “Cost incurred” means the costs to construct or convert beds as outlined in the CON application, and associated increases in projected rates, if applicable, to the applicant and to the state and the comparative efficiency of those costs in comparison to equivalent costs by similar providers in the health service area. *(Indiana State Department of Health; 410 IAC 20.4-1-14; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330)*

**410 IAC 20.4-1-15      “Department” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 15. “Department” means the Indiana state department of health. *(Indiana State Department of Health; 410 IAC 20.4-1-15; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330)*

**410 IAC 20.4-1-16      “Director” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 16. “Director” means the individual acting under the authority of, and assigned the responsibilities by, the commissioner to carry out provisions of IC 16-28-2. *(Indiana State Department of Health; 410 IAC 20.4-1-16; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1330)*

**410 IAC 20.4-1-17      “Effectiveness” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 17. “Effectiveness” means the degree to which diagnostic, preventive, therapeutic, or other actions achieve the intended results. Effectiveness requires a consideration of outcomes to measure. Usually synonymous with efficacy in common use or the probability of benefits to individuals in a defined population from a medical technology applied for a given medical problem under ideal conditions of use. *(Indiana State Department of Health; 410 IAC 20.4-1-17; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331)*

**410 IAC 20.4-1-18      “Efficiency” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 18. “Efficiency” means the capacity to produce the desired results with minimum energy, time, money, or materials and to have the requisite knowledge and skills to perform in the best possible and least wasteful manner. *(Indiana State Department of Health; 410 IAC 20.4-1-18; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331)*

**410 IAC 20.4-1-19 “Ex parte contact” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 19. “Ex parte contact” means communication between or among a party or parties to a review proceeding and any decision making or recommendation making authority or agent without notice and opportunity for all parties to participate in the communication. (*Indiana State Department of Health; 410 IAC 20.4-1-19; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331*)

**410 IAC 20.4-1-20 “Final order” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-29-1; IC 16-29-4

Sec. 20. “Final order” means action by the board, or an appeals panel appointed by the board, to approve or disapprove a project which is subject to review under IC 16-29-4 or IC 16-29-1. (*Indiana State Department of Health; 410 IAC 20.4-1-20; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331*)

**410 IAC 20.4-1-21 “Health facilities” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-21-2-2; IC 16-28-2

Sec. 21. (a) “Health facility” means any building, structure, institution, or other place for the reception, accommodation, board, care, or treatment extending beyond a continuous twenty-four (24) hour period in any week of more than four (4) individuals in need or desire of such services by reason of physical or mental illness, infirmity, or impairment. However, in the case of reception, accommodation, board, care, or treatment in a household or family, for compensation of a person related by blood to the head of the household or family (or to the spouse of the head of the household or family) within the degree of consanguinity of first cousins, the premises in which the person is received, boarded, accommodated, cared for, or treated do not constitute a health facility.

(b) “Health facility” does not include the following:

- (1) Hotels, motels, or mobile homes when used as such.
- (2) Hospitals or mental hospitals, except for that part of a hospital that provides long term care services and functions as a health facility, in which case that part of the hospital is licensed under IC 16-21-2-2 but in all other respects is subject to this article.
- (3) Institutions operated by the federal government.
- (4) Foster homes or day care centers.
- (5) Schools for the deaf or blind.
- (6) Day schools for the retarded.
- (7) Day care centers.
- (8) Children's homes and child placement agencies.
- (9) Offices of the practitioners of the healing arts.
- (10) Any institution in which health care services and private duty nursing services are rendered in accordance with the practice and tenets of the religious denomination known as the Church of Christ Scientist or any offices of Christian Science practitioners.
- (11) Industrial clinics providing only emergency medical services or first aid for employees.
- (12) A residential facility as defined in IC 16-13-21-1 [*IC 16-13 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.*].

(*Indiana State Department of Health; 410 IAC 20.4-1-21; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331*)

**410 IAC 20.4-1-22 “Health service area” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 22. "Health service area" means the geographic area designated as being appropriate for the effective planning and development of health services. In the case of long term comprehensive care beds, the county of location is the service area. For intermediate care facility for the mentally retarded beds, the service area is the subarea of location within one (1) of the three (3) 1974 governor-designated Indiana health service areas: northern, central, or southern. (*Indiana State Department of Health; 410 IAC 20.4-1-22; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331*)

**410 IAC 20.4-1-23 "Indiana health facilities council" defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-1-1

Sec. 23. "Indiana health facilities council" refers to the entity established by IC 16-28-1-1. (*Indiana State Department of Health; 410 IAC 20.4-1-23; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1331*)

**410 IAC 20.4-1-24 "Intermediate care facility for the mentally retarded" defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 24. "Intermediate care facility for the mentally retarded" means a health facility with beds licensed under IC 16-28-2 or used as beds licensed under IC 16-28-2 which serves persons with mental retardation. (*Indiana State Department of Health; 410 IAC 20.4-1-24; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-25 "Noncertified bed" defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 25. "Noncertified bed" means a comprehensive bed licensed, or to be licensed under IC 16-28-2 or used as a bed licensed under IC 16-28-2 which is not certified, or proposed to be certified, for participation in a state or federal reimbursement program, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.). A noncertified bed is the same as a private pay bed. (*Indiana State Department of Health; 410 IAC 20.4-1-25; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-26 "Party" defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 26. "Party" means the following:

(1) State department.

(2) The person, or persons in the case of comparative review, submitting an application for CON review.

(3) Any person determined by the Indiana health facilities council, the board or an appeals panel appointed by the state board, the CRO, or the administrative law judge to be aggrieved by an order issued under this article.

(*Indiana State Department of Health; 410 IAC 20.4-1-26; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-27 "Person" defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-28-2

Sec. 27. "Person" means an individual, firm, partnership, corporation, association, company, and the legal successors thereof. (*Indiana State Department of Health; 410 IAC 20.4-1-27; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-28 “Project excepted from review” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 28. “Project excepted from review” means those projects identified in 410 IAC 20.4-2-4 *[sic.]*. (*Indiana State Department of Health; 410 IAC 20.4-1-28; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-29 “Project subject to review” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 29. “Project subject to review” means those projects identified in 410 IAC 20.4-2-3. (*Indiana State Department of Health; 410 IAC 20.4-1-29; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-30 “Proposal” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 30. “Proposal” means the beds or facility proposed in an application for CON review. (*Indiana State Department of Health; 410 IAC 20.4-1-30; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-31 “Quality care services” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 31. “Quality care services” means that each patient must receive, and each facility must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and plan of care. Based on that assessment, a facility must assure that a patient's abilities in activities of daily living do not diminish unless such diminution is unavoidable because of the resident's clinical condition. Patients are to receive appropriate treatment and services to maintain or improve their ability to carry out daily activities. Activities of daily living include the ability to bathe, dress, groom, transfer, ambulate, use the toilet, eat, and use speech or another functional communication system. Patients who are unable to carry out activities of daily living must receive necessary services to maintain good nutrition, grooming, and personal and oral hygiene. (*Indiana State Department of Health; 410 IAC 20.4-1-31; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-32 “Specialized services” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-29-2

Sec. 32. “Specialized services” means a series of services identified under IC 16-29-2 that are excluded from this article. The specialized services will include services for patients who are ventilator dependent, who have a progressive neuromuscular disease, or who have been infected by human immunodeficiency virus (HIV). (*Indiana State Department of Health; 410 IAC 20.4-1-32; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1332*)

**410 IAC 20.4-1-33 “Sponsored” defined**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 33. “Sponsored” means:

(1) the sponsor organization is financially responsible for the obligations of either the legal entity which owns, or the legal

entity which operates, the comprehensive care beds; or

(2) the sponsor organization is and will remain responsible for the satisfactory delivery of care in the beds sponsored by it.  
(*Indiana State Department of Health; 410 IAC 20.4-1-33; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1333*)

## **Rule 2. Applicability**

### **410 IAC 20.4-2-1 State health plan**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-30-2-4; IC 16-42; IC 16-43; IC 16-46

Sec. 1. (a) The department shall develop and promote a state health plan and recommend to the governor and the general assembly means by which programs and activities can be developed and implemented to effectively and efficiently meet the identified needs. The department shall submit annually, to the governor and to the general assembly, a report of these health needs and the board's recommendations. Each report must be submitted by November 1 of each year.

(b) The report required by subsection (a) must address, on a county-by-county basis, the health needs of the state concerning the provision of the following types of services:

(1) Public health services described in IC 16.

(2) Disease treatment services described in IC 16-46.

(3) Food and drug control services described in IC 16-42 and IC 16-43.

(4) All other services within the jurisdiction of the department. Bed need projections will be published as required by IC 16-30-2-4.

(*Indiana State Department of Health; 410 IAC 20.4-2-1; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1333*)

### **410 IAC 20.4-2-2 Scope of coverage**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5-3-5; IC 4-21.5-3-7; IC 6-2.1-3-20; IC 6-2.1-3-21; IC 16-21-2-2; IC 16-24-1; IC 16-28-2; IC 16-29-1; IC 16-29-4-3

Sec. 2. (a) Projects subject to review include, but are not limited to, the following:

(1) The conversion of existing health facility beds to intermediate care facility for the mentally retarded beds.

(2) An increase by any means, including space reallocation and new construction, in the number of intermediate care facility for the mentally retarded beds in a facility.

(3) The construction of comprehensive care beds which are to be licensed, or will function as if licensed, under IC 16-28-2.

(4) The conversion of existing beds to comprehensive care beds which are to be licensed, or will function as if licensed, under IC 16-28-2.

(5) An increase by any means, including space reallocation, in the number of noncertified comprehensive care beds in a facility if those beds will function essentially as beds licensed under IC 16-28-2.

(6) An increase by any means, including space reallocation, in the number of certified comprehensive care beds in a health facility if those beds will function essentially as beds licensed under IC 16-28-2.

(7) Any request made by, on behalf of, or through an existing or proposed health facility, licensed and regulated under IC 16-21-2-2, IC 16-28-2, IC 16-24-1, or IC 12-11-2 [*IC 12-11-2 was repealed by P.L.272-1999, SECTION 66, effective July 1, 1999.*], that proposed or existing beds be used as beds licensed under IC 16-28-2 and certified to participate in state or federal reimbursement programs, including programs under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.).

(b) Except with respect to the conversion of beds under IC 16-29-4-3, a project to construct, add, or convert comprehensive care beds is presumed to be subject to the review required by this article unless the Indiana health facilities council determines that the project is exempt or excepted by law from review. Any person desiring to construct, or to add comprehensive care beds, or to convert comprehensive care beds without the review and approval required by this article, must obtain the determination of the Indiana health facilities council that the project is exempt or excepted from review. A person who constructs, adds, or converts comprehensive care beds without having obtained such review and approval, or without having petitioned timely for a determination

of exemption or exception from review and approval, or in contravention of a determination by the Indiana health facilities council that the project is not exempt or excepted by law from the review and approval required by this article, is in breach of this article and becomes an unqualified applicant for a license under IC 16-28-2.

(c) Petitions to the Indiana health facilities council for a determination that a project is exempt or excepted from review must be filed with the Indiana health facilities council before construction work on a project is commenced, unless construction work on a project was commenced prior to the effective date of this article, in which case such petitions for a determination of exemption or exception must be filed within thirty (30) days of the effective date of this article.

(d) A petition for a determination that a project is exempt or excepted from review must include the following:

(1) All the reasons the petitioner claims that the project is exempt or excepted from review.

(2) One (1) or more affidavits which set forth sworn statements of fact, made under penalty of perjury, which evidence the basis of the claim that the project is exempt or excepted from review, and which attest to the genuineness and truthfulness of all documentation supporting the affidavit and the petition.

(3) Documents which evidence, are referable to, and which establish each of the sworn statements of fact set forth in the petition.

(4) If the petition claims that a project is exempt or excepted from review under IC 16-29-1-9 through IC 16-29-1-11, an affidavit which sets forth sworn statements of fact made under penalty of perjury that:

(A) if the comprehensive care beds are exempt because they are sponsored by a religious or fraternal organization:

(i) that the religious or fraternal organization is and will continue to be financially responsible for the mortgages, notes, wages, taxes, and other obligations of either the legal entity which owns the beds or the legal entity which operates the beds; or

(ii) is in lieu of the foregoing provision, that the religious or fraternal organization owned, operated, or controlled comprehensive care beds licensed under IC 16-28-2 prior to May 6, 1989, and, as a condition subsequent to obtaining a determination of exemption or exception, that the religious or fraternal organization will own, operate, or, in like degree and in the same or substantially similar manner, control the beds which are the subject of the petition;

(B) the comprehensive care beds will be used to serve members of the religious or fraternal organization;

(C) the organization, if a religious organization:

(i) is an Indiana nonprofit corporation;

(ii) was exempt by virtue of its status as a religious organization from gross income taxation under IC 6-2.1-3-20 on or before December 31, 1986, and continues to be exempt; and

(iii) has conducted worship since December 31, 1986;

(D) the organization, if a fraternal organization:

(i) was exempt from gross income taxation under IC 6-2.1-3-21 on or before December 31, 1986, and continues to be exempt; and

(ii) owned, operated, or sponsored a health care facility licensed under IC 16-28-2 on December 31, 1986;

(E) the organization has complied and will continue to comply with the requirements of IC 16-29-1-9 through IC 16-29-1-11; and

(F) a notice has been published in a newspaper of general circulation in the county for which the project has been proposed and has been provided to all the licensees of comprehensive care beds in that county of the filing of the petition.

(e) Upon a determination by the Indiana health facilities council as to whether a project is exempt or excepted from review, the Indiana health facilities council shall issue a notice of such determination under IC 4-21.5-3-5. Upon receipt of the finding, the director shall certify that the applicant meets the statutory requirements under IC 16-29-1-9 or IC 16-29-1-10 and process the application for licensure accordingly.

(f) To qualify for a review of the Indiana health facilities council's determination, a person must comply with IC 4-21.5-3-7. If a petition for a review is not filed under IC 4-21.5-3-7 within the fifteen (15) day period, the determination of the Indiana health facilities council is final.

(g) Each application for a CON shall be processed and reviewed under the provisions contained in this article. (*Indiana State Department of Health; 410 IAC 20.4-2-2; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1333*)



**410 IAC 20.4-2-3      Exception to coverage**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-21-2; IC 16-28-2; IC 16-29-1; IC 16-29-2; IC 16-29-3-1; IC 25-4; IC 25-31

Sec. 3. (a) Requirements of this article do not apply to the following activities, referred to hereafter as projects excepted from review:

- (1) The construction, development, or other establishment of a Christian Science sanitarium operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts.
- (2) Comprehensive care beds that are owned, operated, or sponsored by a religious organization as described by IC 16-29-1-9 if the beds are to be used to serve members of the religious organization.
- (3) Comprehensive care beds that are owned or operated by an Indiana nonprofit corporation that is owned by a religious organization described in IC 16-29-1-9 and used to serve members of that religious organization.
- (4) Comprehensive care beds that are owned, operated, or sponsored by a fraternal organization as described by IC 16-29-1-10 if the comprehensive care beds are used to serve members of that fraternal organization.
- (5) The replacement of existing facilities without an increase in the number of comprehensive care beds which will function as beds licensed under IC 16-28-2.
- (6) The replacement of existing facilities without an increase in beds which are certified to participate in Title XVIII or Title XIX of the Social Security Act (42 U.S.C. 1395 et seq. or 42 U.S.C. 1396 et seq.).
- (7) The conversion, as authorized by IC 16-29-3-1, by a hospital licensed under IC 16-21-2, of:
  - (A) up to thirty (30) acute care beds to skilled level certified comprehensive long term care beds beginning January 1, 1986; and
  - (B) up to an additional twenty (20) acute care beds to either intermediate level certified comprehensive beds or skilled level certified comprehensive long term care beds, beginning June 1, 1989, if those beds will function essentially as beds licensed under IC 16-28-2.
- (8) The construction, as authorized by IC 16-29-1-8, by a facility licensed under IC 16-28-2, of a maximum of fifteen (15) noncertified comprehensive care beds.
- (9) The construction, as authorized by IC 16-29-1-8, by a hospital licensed under IC 16-21-2, of a maximum of ten (10) noncertified comprehensive care beds.
- (10) The construction or renovation of a comprehensive care bed that will be solely used to provide specialized services under IC 16-29-2. Review under IC 16-29-2 is excluded from this article.

(b) The owner of a CON which has not expired or been voided may sell or otherwise transfer that certificate without additional CON approvals if:

- (1) the certificate is not used outside of the county or, in the case of an intermediate care facility for the mentally retarded proposal, the service area with respect to which it was issued;
- (2) the total number of beds constructed under the CON does not exceed the number originally approved; and
- (3) the department is given notice and documentation of the transfer.

(c) Comprehensive care beds that were exempted from review prior to May 5, 1989, are subject to certificate of need review and approval unless those comprehensive care beds were licensed as such prior to the effective date of this article.

(d) Affirmations of exceptions and exemptions, affidavits of truthfulness, and counter assertions shall be received by the Indiana health facilities council. The Indiana health facilities council shall decide if a project is excepted or exempted from CON review. (*Indiana State Department of Health; 410 IAC 20.4-2-3; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1334*)

**Rule 3.      General Provisions**

**410 IAC 20.4-3-1      Computation of time and filing**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 1. Any time period provided for in this article shall be computed in accordance with the Indiana Rules of Trial Procedures. (*Indiana State Department of Health; 410 IAC 20.4-3-1; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1335*)

**410 IAC 20.4-3-2      Application content**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-30-1-1

Sec. 2. (a) An application for CON under this article shall be filed with the secretary of the Indiana health facilities council upon forms approved by the Indiana health facilities council. The application shall contain such information as the Indiana health facilities council deems necessary.

(b) The application shall include information regarding the need for the project, including the following:

- (1) Justification for the project.
- (2) Evidence of consistency of the project with the goals of the state health plan.
- (3) Rationale for the project if it is not consistent with the state health plan.
- (4) Alternatives to the project.
- (5) Specific location of the project.
- (6) Data regarding the utilization of existing facilities in the county proposed to be served.

(c) The application shall provide financial information about the project, including, but not limited to, the following:

- (1) Pro forma financial statements for the first three (3) years of the project's operation.
- (2) Debt service requirements.
- (3) Sources of financing.
- (4) Projected rates for the facility with evidence that the Medicaid rates used are reimbursable under the Medicaid rate-setting criteria.

(d) The application shall include the health personnel requirements for the operation of the project, including the following:

- (1) A list of all categories of personnel required for the project, the number of personnel to be added or reduced for the project, and plans for recruiting new personnel.
- (2) Data on the availability of health personnel in the service area which shall include at least the response to inquiries made by the applicant to each facility, hospital, home health agency, employment agency, and nurse training institution in the area.

(e) The application shall include information regarding the impact of the project upon the service area, including impact on other providers.

(f) The application shall include information to illustrate and document the experience or capacity of the applicant to provide quality, effective, and efficient care, including, but not limited to, the following:

- (1) A description of past or current adverse licensure action, if any, against any facility owned, operated, or managed by the applicant.
- (2) A list of facilities owned, operated, or managed by the applicant.
- (3) Letters of recommendation and reference.
- (4) Letters of support.

(g) The application shall include a timetable for start-up and completion of the project.

(h) The application shall include a properly notarized affidavit of truthfulness and proper submission signed by the applicant and owner. The affidavit shall indicate that copies of the application and attachments are accurate. In the case of a corporate applicant, the president or chief executive of the corporation shall sign the form on behalf of the corporation; in the case of a partnership, all partners shall sign; in the case of a limited partnership, all general partners shall sign; in the case of a trust, all trustees shall sign; in the case of an estate, the executor or administrator shall sign; in the case of any governmental unit, its managing officer shall sign; and, in the case of a receivership, the receiver of record shall sign and also submit a certified letter of appointment. (*Indiana State Department of Health; 410 IAC 20.4-3-2; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1335*)

**410 IAC 20.4-3-3      Review responsibilities; applicant**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-29-1-7; IC 16-29-4; IC 25-4; IC 25-31

Sec. 3. (a) An application for review under IC 16-29-1 or IC 16-29-4 shall be submitted to the secretary of the Indiana health facilities council.

(b) To defray the costs of hearings and other procedural requirements, applicants shall pay the associated costs as follows:

(1) The applicant shall pay, upon filing an application, or upon supplementing a pending application as described in this article, the following:

(A) A one thousand five hundred dollar (\$1,500) deposit.

(B) A nonrefundable one thousand dollar (\$1,000) filing fee.

(2) Upon the completion of administrative proceedings but prior to the issuing of a final order by the board, the remaining associated costs will be assessed and billed to the applicant, or applicants in the case of comparative review.

(3) If the one thousand five hundred dollar (\$1,500) deposit, or sum of deposits from applicants in the case of a comparative review, exceeds the procedural and administrative costs of review, the excess deposit amount will be refunded to the applicant or applicants on a prorated basis.

(c) An application submitted for review may be withdrawn prior to the board's final order if the applicant files written notice with the Indiana health facilities council.

(d) An applicant who causes an application to be withdrawn shall forfeit the entire one thousand dollar (\$1,000) filing fee. Portions of the one thousand five hundred dollar (\$1,500) expense deposit will be forfeited as follows:

(1) If an application is withdrawn within sixty (60) days of its submission, the applicant shall forfeit the filing fee and an amount equal to the sum of expenses caused by the review of the application.

(2) If an application is withdrawn sixty-one (61) days, or later, after its submission, the applicant shall forfeit the filing fee and remain liable for an amount equal to the entire deposit or an amount equal to the applicant's share of expenses caused by the review, whichever is greater.

(e) The applicant must file a new application and pay the new application fee and deposit in order to initiate review of any project previously withdrawn.

(f) An applicant may modify a filed application at any time until a CRO is assigned and, thereafter, only with the approval of the assigned CRO. Any modifications must be reflected throughout the content of the application as appropriate.

(g) Within five (5) days of the date an application is submitted and date stamped by the secretary of the Indiana health facilities council, the applicant shall cause an advertisement to be published in a newspaper having a general circulation in the county in which the proposed project is to be located. This advertisement must contain the name of the applicant and a description of the proposed project, including the specific location and the estimated cost of the project.

(h) Within five (5) days of the date an application is filed for review, the applicant shall notify, in writing, by United States mail or personal service, the following:

(1) All existing health facilities in the project's service area.

(2) All applicants with pending applications for the same service area.

(3) Persons holding valid CONs for the service area proposed to be served.

(i) Proof of notice complying with the provisions of this section shall be the burden of the applicant and shall be submitted to the Indiana health facilities council.

(j) Following the issuance of an approval, the holder of the approval shall submit a six (6) month progress report on a form prescribed by the department each six (6) months until the department acknowledges that the project is complete.

(k) In accordance with IC 16-29-1-7, all projects which receive final approval become void eighteen (18) months after the determination becomes final unless:

(1) construction plans for the project are approved by the department and the department of fire and building services;

(2) the applicant has completed construction of the project's foundation in conformity with the approved plans as certified by an independent architect licensed under IC 25-4 or an independent professional engineer licensed under IC 25-31; and

(3) construction work on the project is continuous and in conformity with the approved plans.

*(Indiana State Department of Health; 410 IAC 20.4-3-3; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1336)*

#### **410 IAC 20.4-3-4      Review responsibilities; secretary, Indiana health facilities council**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-29-1; IC 16-29-4

Sec. 4. (a) The secretary of the Indiana health facilities council shall receive and date stamp applications for projects subject to review under IC 16-29-4 and IC 16-29-1.

(b) The secretary shall collect, deposit, and administer the fees paid under section 3 of this rule, as required by law, and

maintain appropriate records.

(c) When an application is filed, the secretary shall notify the Indiana health facilities council and assure that a CRO from the approved list is assigned to the project.

(d) The secretary shall require a response to be submitted to every request on the application as filed.

(e) Past and current licensure and certification survey status reports for each health facility in Indiana owned, operated, or managed by an applicant shall be made available upon request to the CRO to the Indiana health facilities council by the secretary, if requested.

(f) The secretary shall assign a CRO to each application submitted for review and have the CRO compensated from the application filing fee and deposit.

(g) The secretary shall monitor the review progress of each application and report to the Indiana health facilities council any action or inaction by the CRO which appears to impede efficient, impartial review.

(h) The secretary shall have copies of the Indiana health facilities council's proposed findings and recommended order distributed according to the notice requirements of IC 4-21.5.

(i) The secretary shall receive petitions for review of the Indiana health facilities council's proposed findings and recommended orders under IC 4-21.5.

(j) The activities of the secretary shall be governed by the ex parte contacts policy under section 12 of this rule. (*Indiana State Department of Health; 410 IAC 20.4-3-4; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1337*)

#### **410 IAC 20.4-3-5      Review responsibilities; CRO**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-28-2

Sec. 5. (a) The secretary of the health facilities council shall assign a CRO to each application filed for review.

(b) Once assigned to a project, the CRO shall be responsible for coordination of the review procedures set forth in this article.

(c) The CRO shall have the authority to assess the completeness of assigned applications and to require additional information from the applicant as needed within time deadlines set by the CRO. The CRO shall also have the authority to accept or reject any information submitted and to reject applications which, in the CRO's assessment, are not complete or do not meet the requirements set by the CRO for the submission of additional information.

(d) If, within a single sixty (60) day time period, two (2) or more applications for projects that would result in the offering of similar services and facilities in a health service area affected by the project are filed, the CRO shall review them comparatively. A sixty (60) day time period will commence when the first reviewable application for a service area is filed and will end sixty (60) days from that date.

(e) The CRO may seek technical assistance in the review of applications as the officer deems appropriate.

(f) The CRO shall give written notification of review to the applicant and to any other party by mail. At a minimum, the written notification shall contain the following items:

(1) The date of commencement of the review.

(2) The proposed schedule for the review.

(3) A list of any applications which will be comparatively reviewed with the application.

(4) Instructions for the submission of comments to the CRO about the application.

(g) The CRO shall assure that each project received by the Indiana health facilities council and assigned to him or her is tracked and that appropriate documentation of status and action is maintained.

(h) The CRO shall conduct a public meeting in the county in which the project is proposed to be located. To conduct the public meeting, the CRO shall do the following:

(1) The CRO shall publish a notice of the meeting in a newspaper of general circulation in the county in which the proposed project is to be located. The notice, which shall be published at least ten (10) days before the meeting, shall include the date, time, and place of the meeting and contain a brief summary of the proposed project, including the specific location and the estimated cost of the project.

(2) At least five (5) days before the meeting, the CRO shall provide a copy of the published notice by first class mail to all existing and proposed health facilities that are providing, or have notified the Indiana health facilities council of their intent to provide, the same or similar services in the health service area in which the proposed project is to be located.

(3) The CRO shall determine how the public meeting is to be conducted and shall open the meeting with an explanation of procedures.

(4) The CRO shall have a transcript of the meeting made and placed in the project file to be used by the CRO, the Indiana health facilities council, and the board in making recommended and final orders on the project.

(5) The CRO shall prepare, for each application heard, proposed findings of fact and a recommended order which will be forwarded to the Indiana health facilities council at the most immediate regularly scheduled meeting of the Indiana health facilities council for which inclusion on the agenda and appropriate notice can be accomplished. The proposed findings shall address each of the review factors and considerations in section 10 of this rule.

(6) The CRO must present preliminary findings and a recommended order to the Indiana health facilities council, and be available to represent the CRO's position in subsequent appeals.

(i) The activities of the CRO shall be governed by the ex parte contacts policy under section 12 of this rule. (*Indiana State Department of Health; 410 IAC 20.4-3-5; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1337*)

**410 IAC 20.4-3-6      Review responsibilities; Indiana health facilities council**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5-1-2; IC 16-28-2; IC 16-28-10-1; IC 16-30-2-2

Sec. 6. (a) The Indiana health facilities council may recommend, before the conversion of existing health facility beds to intermediate care facilities for the mentally retarded beds or the construction of a new intermediate care facilities for the mentally retarded facility, that the board issue a preliminary approval of the proposed project if the Indiana health facilities council determines that there is an insufficient number of available beds to care for all persons who are determined under IC 12-11-2 [*IC 12-11-2 was repealed by P.L.272-1999, SECTION 66, effective July 1, 1999.*] to be appropriate for placement in an intermediate care facility for the mentally retarded.

(b) The Indiana health facilities council shall review all applications for approval to construct or add, by any means, comprehensive care beds or beds which will function as beds licensed under IC 16-28-2 as described in 410 IAC 20.4-2-2. After reviewing an application, or applications in the case of a comparative review, the Indiana health facilities council shall make proposed findings based on information prepared by the department in accordance with IC 16-30-2-2 and any other relevant information as to the need for the proposed beds, quality care services, or cost incurred. Only after finding that the beds are necessary and adequate documentation of the applicant's experience or capacity to provide quality, effective, and efficient care has been supplied, the Indiana health facilities council shall recommend that the board approve additional comprehensive beds.

(c) The Indiana health facilities council shall receive, and accept or reject, all affidavits of truthfulness and any other requests for determinations of reviewability.

(d) The Indiana health facilities council shall appoint a roster of CROs who:

(1) shall not be employees of the department and need not be administrative law judges within the meaning of IC 4-21.5-1-2; and

(2) shall assist the Indiana health facilities council in its assessment of applications and be responsible for:

(A) coordinating the review processes;

(B) conducting community-based public meetings held under this article; and

(C) preparing proposed findings of fact and a recommended order for the Indiana health facilities council's consideration.

(e) The Indiana health facilities council shall monitor reviews to prevent any action or inaction of a CRO from impeding efficient and impartial review of an assigned application.

(f) The Indiana health facilities council shall receive the proposed findings and recommended order of the CRO.

(g) The Indiana health facilities council may seek assistance in the review of the proposed findings and recommended order of the CRO as the Indiana health facilities council deems appropriate.

(h) After completing its review of the CRO's proposed findings and recommended order and other information as the Indiana health facilities council deems appropriate, the Indiana health facilities council shall:

(1) adopt the proposed findings and recommended order of the CRO; or

(2) reject the proposed findings and recommended order of the CRO and formulate and formally adopt:

(A) proposed findings for each review factor set out in section 11 of this rule; and

(B) a revised recommended order.

(i) The Indiana health facilities council shall provide copies of the Indiana health facilities council's proposed findings and recommended order, including instructions for filing a petition for review, according to administrative law requirements of IC 4-21.5.

(j) If no petition for review is granted and/or no hearing is held, the proposed findings and recommended order of the Indiana health facilities council shall be forwarded to the department as the official proposed findings and recommended order.

(k) If a petition for review is granted, an administrative law judge will conduct a hearing in accordance with IC 4-21.5 and IC 16-28-10-1.

(l) In its conduct of its review responsibilities, the Indiana health facilities council shall be governed by the ex parte contacts policy under section 12 of this rule. (*Indiana State Department of Health; 410 IAC 20.4-3-6; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1338*)

**410 IAC 20.4-3-7      Review responsibilities; aggrieved party**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-28-2

Sec. 7. An aggrieved party to the official proposed findings and recommended order must submit a petition for review to the secretary of the Indiana health facilities council, in writing, within fifteen (15) days after the recommended order is served. (*Indiana State Department of Health; 410 IAC 20.4-3-7; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1339*)

**410 IAC 20.4-3-8      Review responsibilities; administrative law judge**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5-1; IC 16-28-10-1

Sec. 8. (a) Except as provided in subsection (b), an administrative hearing that complies with IC 4-21.5 must be held in the course of the CON process if a petition for review of the Indiana health facilities council action is granted.

(b) No administrative hearing will be held if:

(1) no petitions for review are granted; or

(2) all filed and granted petitions for review, if any, are withdrawn.

(c) The board shall designate an independent hearing officer to hold the administrative hearing. The hearing officer who has all the duties and powers given to the board in connection with the administrative hearing and shall be an administrative law judge within the meaning of IC 4-21.5-1, shall be admitted to the practice of law in the state of Indiana, but shall not be:

(1) an employee of the state;

(2) a member of the Indiana health facilities council; or

(3) the CRO assigned to the project which is the subject of the hearing.

(d) A record of the proceedings of all administrative hearings shall be made.

(e) The cost of appointing an administrative law judge shall be paid by the applicant if the administrative law judge finds in favor of the state. If the administrative law judge finds in favor of the applicant, the cost of appointing the administrative law judge shall be paid by the state.

(f) Following the hearing, the administrative law judge shall prepare and file proposed findings of fact and a recommended order as required by IC 4-21.5 and IC 16-28-10-1 to all parties to the review and to any person who so requests.

(g) If no objections are filed and no petition for review granted, the proposed findings and recommended order of the administrative law judge shall be forwarded to the board as the official proposed findings and recommended order.

(h) If objections are filed and a petition for review is granted, the board shall appoint an appeals panel consisting of three (3) members to review the order of the administrative law judge.

(i) The administrative law judge shall be governed by the ex parte contacts policy under section 12 of this rule and the provisions of IC 4-21.5 in conducting the administrative hearing and associated procedures. (*Indiana State Department of Health; 410 IAC 20.4-3-8; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1339*)

**410 IAC 20.4-3-9      Review responsibilities; appeals panel**

Authority: IC 16-29-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-28-10-2

Sec. 9. (a) If objections are filed and a petition for review is granted, proceedings for the review of a proposed finding and recommended order of the administrative law judge shall be conducted by an appeals panel appointed by the board under IC 16-28-10-2.

(b) The appeals panel is the ultimate authority under IC 4-21.5. An order resulting from an appeals panel's proceeding shall be a final order as described under section 10 of this rule.

(c) The cost of the proceedings conducted by the panel, including the fees of the panel members, shall be paid by the applicant if the panel finds in favor of the state. If the panel finds in favor of the applicant, the cost shall be paid by the state.

(d) The appeals panel shall be governed by the ex parte contacts policy under section 12 of this rule and the provisions of IC 4-21.5 in conducting the review procedures. (*Indiana State Department of Health; 410 IAC 20.4-3-9; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1339*)

**410 IAC 20.4-3-10      Review responsibilities; executive board**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-29-1-7; IC 16-29-4; IC 16-30-2

Sec. 10. (a) Findings and final orders, as required by law, shall be issued for each project subject to review under IC 16-29-4 and IC 16-29-1.

(b) The board shall receive the proposed findings and recommended order, or recommended orders in the case of a comparative review, of the Indiana health facilities council adopted under section 6 of this rule, and after reviewing the record:

(1) adopt the findings and recommended order of the Indiana health facilities council; or

(2) reject the proposed findings and recommended order of the Indiana health facilities council and formulate and formally adopt:

(A) findings for each review factor set out in this section; and

(B) a revised order which shall be the final order.

(c) The board shall receive the proposed findings and recommended order, or recommended orders in the case of a comparative review, of the administrative law judge adopted under section 8 of this rule, and after reviewing the record:

(1) adopt the proposed findings and recommended order of the administrative law judge; or

(2) reject the proposed findings and recommended order of the administrative law judge and formulate and formally adopt:

(A) findings for each review factor set out in this section; and

(B) a revised order which shall be the final order.

(d) For each application approved, specific written findings shall be made concerning the need for and appropriateness of additional comprehensive care and intermediate care facilities for the mentally retarded beds in the health service area, consistency with the annual assessment of health needs under IC 16-30-2, quality care services, and cost incurred.

(e) For each application disapproved, written findings shall be made stating the basis on which the project was disapproved, including the need for and appropriateness of additional comprehensive care and intermediate care facilities for the mentally retarded beds in the service area, consistency with the annual assessment of health needs under IC 16-30-2, quality care services, and cost incurred.

(f) The written findings and final determination of the board shall be sent to the Indiana health facilities council, to the applicant, to the counsel of record (if any), and to affected persons by certified mail, return receipt requested. The written findings and final order of the board shall be available upon request.

(g) In its conduct of its review responsibilities, the board and the department shall be governed by the ex parte contacts policy under section 12 of this rule.

(h) The secretary of the Indiana health facilities council shall monitor the progress of the holder of the CON in meeting the time table for project development. An approval is void eighteen (18) months after it becomes final unless the applicant has satisfied the requirements of IC 16-29-1-7. (*Indiana State Department of Health; 410 IAC 20.4-3-10; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1340*)

**410 IAC 20.4-3-11      Review factors**

Authority: IC 16-29-1-12; IC 16-29-1-13

Affected: IC 16-28-2; IC 16-30-2-2

Sec. 11. (a) The agents responsible for conducting review and the Indiana health facilities council under this article shall consider the following:

(1) A proposed project's consistency with the annual assessment of health needs under IC 16-30-2-2 using the following factors in making proposed findings, recommended orders, and final orders:

- (A) The availability of alternative, less costly, or more effective methods of providing services.
- (B) The availability of resources, including health personnel, management personnel, and funds for capital and operating needs or sources to meet the identified need.
- (C) The availability of alternative uses of resources for the provision of other health care services.
- (D) The capacity of existing market conditions to improve quality assurance, cost containment, and responsiveness to consumer preferences.
- (E) The capacity of the existing market conditions to improve capital allocations for long term care, control long term care expenditures, and to better meet the long term care needs and preferences of residents of the health service area of application.
- (F) The competitive factors of the free enterprise system, with the goal of encouraging competition and efficiency in the utilization of health resources.
- (G) The comparative efficiency of proposed costs in comparison to equivalent costs of similar projects in the health service area.

(2) Information required to be provided under 410 IAC 20.4-4-1.

(3) The need for additional beds.

(4) Current availability of personnel and whether the applicant has demonstrated ability to staff the project proposed in the application.

(5) The reimbursability of proposed and forecasted rates. In cases of comparative review, rates of reimbursement shall not be considered as a factor in the review if the applicants demonstrate that forecasted rates are reimbursable under Medicare and/or Medicaid.

(6) The experience of the applicant as a health care provider. Documentation may include past and current licensure status, federal and state survey reports, statements of community or consumer support for the project or lack of support, and any other relevant information provided.

(7) The project's economic feasibility, including the following:

- (A) Evidence that the assumptions used in financial planning and projections are based on the actual experience of the applicant or other providers.
- (B) Evidence that the applicant has considered the reimbursement policies of major payers and their impact on revenue and future capital requirements.

(8) The utilization of existing beds in the service area shall be considered as follows, except in the case of intermediate care facilities for the mentally retarded bed conversions:

(A) If the existing utilization rate for all certified comprehensive care beds in the county of application is less than ninety percent (90%), or if the addition of the certified beds proposed in the application will reduce the existing utilization rate for all certified comprehensive care beds in the county of application below ninety percent (90%), there is a presumption that the certification of the beds is not necessary.

(B) If the existing utilization rate for all noncertified comprehensive care beds in the county of application is less than ninety percent (90%), or if the addition of the noncertified beds proposed in the application will reduce the existing utilization rate for all noncertified comprehensive care beds in the county of application below ninety percent (90%), there is a presumption that additional noncertified beds are not necessary.

(9) The department shall consult with the division of aging and rehabilitative services [*division of disability, aging, and rehabilitative services*] of the office of the secretary of family and social services on the need for intermediate care facilities for the mentally retarded beds as identified under requirements of the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.



(b) An agency responsible for conducting review under this article shall be governed by the ex parte contacts policy under section 12 of this rule. (*Indiana State Department of Health; 410 IAC 20.4-3-11; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1340*)

**410 IAC 20.4-3-12 Ex parte contacts**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 4-21.5; IC 16-28-2

Sec. 12. (a) Following the commencement of any procedural, administrative, or judicial hearing under this article and prior to the time when a final order on an application is issued by the board and all appeals are exhausted, there shall be no ex parte contacts relative to the project among the applicant or a person acting on behalf of the applicant or holder of an approval, any person opposed to the issuance or in favor of the withdrawal of an approval, and the comparative hearing officer, a member of the Indiana health facilities council, a member of the appeals panel or the board, or an administrative law judge. Contacts between the applicant or persons acting on behalf of the applicant or holder of an approval and a person employed or engaged by the board, department, or Indiana health facilities council exercising any responsibility respecting the application or its withdrawal are permitted if contacts are made through counsel for the department and are for the purpose of exchanging information or interviews with witnesses.

(b) Except during the proceedings of a hearing, there shall be no ex parte contact relative to any application between a person acting in the capacity of a review officer or administrative law judge under this article and a person employed by the Indiana health facilities council or the department and exercising any responsibility respecting any application. However, contacts are permitted if agreed to by all parties to the hearing proceedings and an opportunity is afforded for all parties to be involved or represented by counsel.

(c) Provisions of this section do not preclude aid received from any person employed or engaged by the department acting in that capacity provided that a staff assistant may not communicate information of a type that would be prohibited under subsection (a) or would furnish, augment, diminish, or modify the evidence in a record. (*Indiana State Department of Health; 410 IAC 20.4-3-12; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1341*)

**Rule 4. Data Reporting**

**410 IAC 20.4-4-1 Scope**

Authority: IC 16-28-1-12; IC 16-29-1-13

Affected: IC 16-29-4; IC 16-30-2-4

Sec. 1. (a) Each provider of long term care services of the types which are subject to review under IC 16-29-4 or IC 16-29 shall provide to the department, on forms specified by the department, quarterly census data which includes, but is not limited to, patient days of each facility grouped by age, sex cohort, payer classification, and category defined by the department, such as distinct part bed or skilled nursing facility bed.

(b) The data collected shall be used, with other relevant information, to assess the need for additional licensed beds. (*Indiana State Department of Health; 410 IAC 20.4-4-1; filed Dec 5, 1997, 3:30 p.m.: 21 IR 1342*)

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